

USAWC STRATEGY RESEARCH PROJECT

ALLEGED GENOCIDE IN SUDAN – WHERE DOES THE
US NATIONAL SECURITY STRATEGY TAKE US IN LIGHT
OF THE UN GENOCIDE CONVENTION AND LINGERING
MEMORIES OF FAILURE TO INTERVENE IN RWANDA?

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ABSTRACT

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The recent crisis in the Darfur region of Sudan has been highlighted amidst claims that there is genocide in progress. Claims have come not just from private individuals and organizations, but also from President Bush, the Secretary of State, and a resolution of Congress.

Despite these claims and the existence of an international obligation to prevent genocide found in the UN Convention on Genocide, the US, the UN and the international community have largely failed to act.

Using Rwanda as a baseline and the current situation in Sudan as a case study, this project examines the US response to the alleged genocide from the perspective of the US as a signatory to the Genocide Convention. Given the US National Security Strategy, what are the competing interests and concerns that impact this crisis? And what is the appropriate response to this crisis? Is there something about this specific allegation of genocide that suggests prevention efforts will succeed or fail?

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ALLEGED GENOCIDE IN SUDAN – WHERE DOES THE US NATIONAL SECURITY STRATEGY TAKE US IN LIGHT OF THE UN GENOCIDE CONVENTION AND LINGERING MEMORIES OF FAILURE TO INTERVENE IN RWANDA?

The first debate in the 2004 US presidential elections race was televised to an audience of millions on Thursday, 30 September 2004, with a focus on foreign policy. Issues discussed ranged from war in Iraq to nuclear non-proliferation and North Korea before turning to the crisis in Sudan. Without sharing consensus on what should be done, President Bush and Senator Kerry readily agreed that the crisis involves genocide and that now is the time for action. In the weeks that followed, some support for deployment of African Union (AU) forces was generated, but no comprehensive response to the allegations of genocide was formulated and United Nations (UN) initiatives to substantiate the genocide waned. Five months later, the UN and the US continue to disagree about the existence of genocide and the crisis continues.

Against a backdrop of collective failure to respond to genocide in nearby Rwanda and the existence of an obligation to prevent genocide found in the UN Convention on the Prevention and Punishment of the Crime of Genocide¹ (hereinafter the UN Genocide Convention or the Convention), what is the appropriate response to current claims of genocide? Should there be unilateral action by the US? UN action? New economic sanctions, a military intervention, or continuing diplomatic pressure? Some combination of all of the above? Or perhaps if we wait long enough, it will all go away?

With the world distracted but still watching, this paper provides background and context for the current crisis in Sudan by examining the UN Genocide Convention, the genocide in Rwanda, and the current situation in Sudan before reviewing alternative courses of action available to US strategic leaders, assessing risks, and making recommendations.

BACKGROUND – UNDERSTANDING THE CONTEXT FOR STRATEGY FORMULATION

THE UN GENOCIDE CONVENTION

On December 11, 1948, the US became one of the first signatories to the UN Genocide Convention.² Despite enthusiastic participation in drafting the Convention and early signature, the US failed to ratify the treaty until 1988! This lapse of four decades did not reflect indifference to genocide; the period was characterized by vigorous and prolonged debate over a perceived conflict between the language of the Convention and US domestic interests. Specifically, a powerful minority argued that the Convention would invade US sovereignty by undermining segregation laws and expanding federal authority at the expense of states rights.³

Over the next forty years, idealist supporters persisted and, buoyed by support from the Reagan Administration focused on improving the US human rights image in the Cold War world,⁴ the US finally ratified the Convention.⁵

The UN Genocide Convention flows from UN General Assembly Resolution 96 passed in 1946 which established genocide as a crime under international law.⁶ The precise language of the Convention was the subject of heated debate during drafting, but the final product is spelled out in eight short articles. In Article I, Convention parties confirm that genocide is a "crime under international law which they undertake to prevent and to punish" as it is defined in Article II. Article III expands the crime to include conspiracy, attempts, and incitement to commit genocide. Articles IV-VII address prosecution of violators and Article VIII provides that parties may call on the UN to take action to prevent or suppress genocide.⁷

By emphasizing "intent to destroy, in whole or in part, a national, ethnical, racial or religious group," characteristics that victims can't change or be expected to change, the Convention succeeds in distinguishing genocide from homicide or mass killing and establishing genocide as the ultimate crime against humanity. The Convention also acknowledges authority to prevent and punish genocidal acts.⁸ The UN Charter's predisposal towards the sanctity of sovereignty might suggest limits to this authority,⁹ and the authority to intervene in states that are not party to the Convention is not addressed, but nothing in the Convention expressly precludes intervention to prevent genocide. In fact, if intervention to prevent genocide is effective, genocide might never occur.¹⁰

Despite noble intentions and over 50 years in force for many nations,¹¹ numerous genocides make it clear the Convention does not prevent genocide – witness the Tutsi in Rwanda, Hutu in Burundi, Ibo in Nigeria, Ache Indians in Paraguay, Buddhists in Tibet, and thousands if not millions killed in Cambodia, Indonesia, Uganda and the Former Yugoslavia.¹² Further, the Convention's commitment to prevent and punish acts of genocide is not supported by a mechanism to identify genocide or warn of its approach, and means or responsibility for intervention, or repercussions for failing to act, are not established. To illustrate, in the aftermath of Rwanda President Clinton found himself subject to impeachment not for failing to respond to genocide, but for providing false and misleading testimony about his relationship with a subordinate government employee.¹³ Similarly, UN Secretary-General Kofi Annan was directly involved in coordinating the less than successful UN response in Rwanda while serving as UN Undersecretary-General from 1993-1996. In late 1996, he was elected to his present post, the first Secretary-General to be elected from the ranks of the UN staff.¹⁴

In ratifying the UN Genocide Convention the US joined a community of nations willing to take a stand against genocide in principle, but of questionable commitment to do more in practice. Although the US needed almost forty years to become a party to the Convention, the opportunity for leadership on the subject of both prevention and punishment continues to exist. Since 1988, the US has enhanced the commitment to punish through support of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The goal of prevention, however, has provided greater challenges; none as significant or met with greater failure than in Rwanda.¹⁵

GENOCIDE IN RWANDA

Particularly with the benefit of hindsight, the international community's failure to respond to the 1994 crisis in Rwanda is shocking. Casualty estimates vary; UN reports conclude that approximately 800,000 men, women and children were systemically slaughtered over the course of 100 days between April and July 1994.¹⁶ Given warning signs and timely information available regarding the slaughters, "the opportunity clearly existed for the United States and its partners to intervene quickly, save hundreds of thousands of lives, and invigorate as never before the ethical vision embedded in the text of the [UN Genocide Convention]."¹⁷ President Clinton acknowledged publicly in 1998 that "[w]e did not act quickly enough after the killing began. We did not immediately call these crimes by their rightful name – genocide."¹⁸

Rwanda is one of Africa's most densely populated countries with a population in excess of 7 million.¹⁹ Slightly smaller than Maryland, Rwanda is bordered in central Africa by Congo, Uganda, Tanzania, and Burundi. Both Rwanda and Burundi can associate most of their conflict with tensions between two rival ethnic groups, the Hutus and the Tutsis. Long before German colonization in the 20th Century and Belgian succession after World War I, the predominately agricultural Hutu coexisted with the generally pastoral Tutsi sharing land, culture, language, and sometimes family through intermarriage. Societal leadership and greater economic and political status usually belonged to the Tutsi, but movement between groups was possible – distinctions based on true ethnic differences had evolved into distinctions more readily based on social and economic status.²⁰ Transition to European control brought clearer ethnic divisions, and a clear preference for the presumably more European-like Tutsi. With better education, training, and jobs going to the Tutsi, the distinction disadvantaged the Hutu, who were further distinguished by a Belgian requirement to carry identification cards designating the bearer as Hutu or Tutsi.²¹ Racial distinctions festered into distrust, hatred, and finally, overthrow of the Tutsi by the Hutu just prior to independence in 1962.²²

In the decades that followed, Rwanda's Tutsi minority would suffer extensively at the hands of an increasingly hard-line Hutu-dominated government. Almost 30 years later, Tutsi forces of the Rwandan Patriotic Front (RPF), many of them children of Tutsis who fled Rwanda to Uganda in 1963, would invade from Uganda to do battle with the largely Hutu Rwandan Armed Forces (RGF) of long-serving President Juvenal Habyarimana. After four years of fighting, the parties reached a settlement at Arusha, Tanzania in August 1993. The resulting Arusha Peace Agreement reflected a commitment to cease hostilities, return refugees, and create a new broad-based transitional government, while calling for an expanded UN presence to support implementation.²³ A few months later, with the UN Assistance Mission for Rwanda (UNAMIR) established and preparation for deployment progressing, prospects for a harvest of peace seemed bright; unfortunately, seeds of genocide had already been planted.

Unnoticed by UN military planners, and unknown to the UNAMIR force commander, Canadian Major General Romeo A. Dallaire, the UN Commission on Human Rights had published a report on extrajudicial, summary or arbitrary executions in Rwanda on August 11, 1993.²⁴ Based on a trip to Rwanda conducted in April 1993, this report documented disturbing accounts of everyday violence that included death threats, political assassinations, and massacres of the civilian population in the combat zone and significant distances from the combat zone. With no effective judicial system, no system to prevent violence or protect victims, and a state-sponsored radio station inciting killings, these massacres were consistently directed against the minority Rwandan Tutsi population. Not only was genocide already being committed, albeit on a smaller scale than would be seen in 1994, it was being committed with impunity and sometimes with the direct support of government officials.²⁵ With his UNAMIR force already reduced by one battalion by a reluctant UN Security Council, Major General Dallier was clearly at a disadvantage should something more than peace support operations unfold. Prospects for this eventuality increased when Burundi's Hutu leader was assassinated; as Tutsi leadership took over, thousands of Hutu refugees fled into Rwanda. Prospects for trouble increased still further when Major General Dallier, on the ground in the Rwandan capital of Kigali since 22 October 1993, received disturbing news from an informant in January 1994. According to the informant, forces were being trained and equipped by the Rwandan Government to exterminate the Tutsi, and plans to provoke the departure of UNAMIR forces had been prepared.²⁶ Major General Dallaire had missed the early warning in the August UN Human Rights Report, but was now faced with an opportunity to intervene; he forwarded the informant's report and a request to take action to his superiors at the UN. A reply, sent under

the name of then UN Undersecretary-General Kofi Annan, was clear – avoid engaging in operations outside the role of the UNAMIR mandate.²⁷

Over the next two months, Major General Dallaire and the UN Secretary General's Special Representative in Rwanda, Mr. Jacques-Roger Booh Booh of Cameroon, continued to encourage action without success. To make matters worse, on March 1st, UN Secretary General Boutros Boutros-Ghali met with a special envoy of the President of Rwanda and threatened to withdraw UNAMIR unless progress on the Arusha Peace Agreement was demonstrated, a position consistent with the desires of the Rwandan Government according to information provided by the informant in January.²⁸ Whatever the true intentions of President Habyarimana, his role ended when his plane was shot down over Kigali on April 6th. Within the hours and days that followed, roadblocks were established and systematic killing of Tutsis and moderate Hutus in the capital was initiated starting with the prime minister and rapidly spreading to other key government officials. In the course of this killing, which quickly silenced political opposition, several Belgian peacekeepers were brutally murdered by Rwandan soldiers, again echoing the plans leaked by the informant. With the template for extermination now defined, Major General Dallaire started to call the killing genocide and continued to seek authority for expanded efforts and more forces. No doubt influenced by failures in Somalia, the only response from the West was an expedited national evacuation operation mounted by Belgium, France, Italy and the United States.²⁹ Clearly uncomfortable characterizing the killing as genocide, the UN Security Council, with strong US encouragement, passed Resolution 912 on 21 April 1994 reducing UNAMIR to 270 personnel and narrowing its mandate to focus on facilitating a cease fire.³⁰ This position was reversed less than 30 days later when authority for UNAMIR to expand for a Chapter VI peacekeeping effort was adopted in Resolution 918, but the measure was poorly supported and not clearly focused on stopping the genocide.³¹ Only after Resolution 929 was adopted on 22 June 1994 did forces of any significance, this time French forces offered as an interim measure until UNAMIR could expand, deploy to Rwanda, although again with a humanitarian mandate.³²

From April 1994 until RPF forces secured the country in July 1994, the period when genocide was at its height, the UN Security Council continued to lack consensus over an appropriate response save for attempts to return the parties to the peace process. Further, when the Security Council finally did commit to action, identifying contributing member states and deploying resources took prolonged periods. For example, a US contribution of armored personnel carriers identified in May, offered on the condition that the UN pay for leasing the vehicles, finally reached the theater in mid-July.³³ In the interim, genocide of the Tutsi

population continued at an average pace of eight thousand men, women and children per day for 100 days. This was not a case of civilians caught in the crossfire of soldiers, or of noncombatants ravaged in the wake of war itself. This was a pre-planned and organized effort to exterminate the Tutsi population largely carried out by a mobilized, machete bearing, Hutu civilian population. Civilians were incited to kill not just neighbors, but in some cases family members, facts that set this genocide apart from even Nazi Germany.³⁴

Major General Dallaire clearly recognized that genocide was being implemented independent of the civil war, but it is not clear when the UN Security Council member states reached this realization. As long as killings were believed to be inextricably intertwined with civil war, a US interest in avoiding a greater peacekeeping intervention until the parties again committed to the peace process was consistent with President Clinton's recently articulated (and Somalia influenced) Presidential Decision Directive (PDD) 25.³⁵ Once the scale and nature of genocide independent of civil war was confirmed, however, the continuing failure to act becomes more difficult, and maybe impossible, to explain. Whether because of extreme pessimism about the potential for intervention to succeed, or because of a strong aversion to response no matter what the nature of the crisis (i.e., "too expensive, too far, too little and too black"),³⁶ by the time consensus was reached, opportunity was lost.

Whatever the precise reasons for failing to intervene, the crisis did not end with the genocide. Prompted by the same radio station that had incited genocide, hundreds of thousands of Hutus fled the incoming RPF headed for refugee camps in neighboring countries. With RPF leadership in control of Rwanda, the US quickly committed military forces to deliver food and medical supplies in what became a massive relief operation costing in excess of one billion dollars, far in excess of what some have estimated would have been necessary to fund an attempt to stop the genocide.³⁷ To administer justice for the crimes of genocide, the US joined other nations in creating the International Criminal Tribunal for Rwanda (ICTR), an expensive and significant commitment to fighting genocide that signaled clear, albeit late, support for the UN Genocide Convention.³⁸

As months and years passed, the US became increasingly comfortable describing the crisis in Rwanda as genocide. The US further renewed commitments to fight genocide while publicly acknowledging the failure to timely call the crisis genocide and to take action that might have saved innocent Rwandans,³⁹ a conclusion the UN also reached in its comprehensive report released in 1999.⁴⁰ In addition to military intervention, which subsequent study concludes could have been as small as a 5,000 member force,⁴¹ the UN aired thoughts about what could have or should have been done. Ideas included listening to unequivocal warnings found in early

reports, denouncing the atrocities early and often by naming those responsible before the international community, calling the killings genocide despite legal implications, stopping or condemning radio messages inciting violence and hatred, and initiating an arms embargo before genocide started.⁴² Roundly criticizing itself and its member states, the UN found numerous factors contributed to its failure to act effectively. Specific factors included not just an overall lack of will and resources, but inadequacy of the UNAMIR mandate, an overriding influence of the Somalia experience, lack of analytical capacity and proper information flow, and Rwanda's presence as an unchallenged member of the Security Council during the genocide.⁴³ Proposals for the future include standing or regional response forces,⁴⁴ early warning program improvements and, most difficult, Security Council and member nation willingness to act to prevent genocide whenever and wherever it occurs.⁴⁵

Would the Rwandan experience prepare the UN and the US for the next Rwanda? Would there be response mechanisms and plans in place? Also, would there be political will to act? Or, like Rwanda, would there be another demonstration of "the power of the word 'genocide' and the contortions the 'indispensable nation' [would go] through to avoid using it?"⁴⁶ The eventual support for interventions in the Balkans focused on stopping ethnic cleansing, a similar but less egregious crime against humanity, might suggest improved prospects for effective genocide response in the future. At the same time, our inability to reach consensus on the International Criminal Court (ICC), a court designed to provide a permanent forum to address genocide and crimes against humanity, reflects foreseeable tension. Ready or not, allegations of genocide from Africa again surfaced, this time from Sudan.

SUDAN – THE ROAD TO GENOCIDE

Sudan, Africa's largest country, gained independence from Britain and Egypt in 1956. Situated on the bridge lands between Africa and the Middle East, Sudan is home to an Arab influenced, largely Muslim population in the north, and a generally undeveloped black African population in the south.⁴⁷ Based on a history of oppression from the Muslim controlled government in the north, the nation erupted into armed conflict that has continued since independence with little pause.⁴⁸ Not just a war between north and south, the struggle has involved a fight for power, resources, religious freedoms, and human rights by non-Muslims in general, and between competing Muslim sects.⁴⁹ Sudan's economy is weak, but the country does have oil resources that have been exploited with the assistance of China, Sudan's largest trading partner.⁵⁰ In addition to China, oil concession holders represent interests from Canada, Austria, Qatar, and France (see Figure 1).

Sudan's struggle for peace achieved some success when an agreement between opposing factions was signed in May 1994. Purportedly reconciling differences between the government and the opposition Sudan People's Liberation Movement/Army (SPLM/A), the agreement provided for power and revenue sharing between the north and the south, while retaining the potential for southern independence in the future.⁵¹ Unfortunately, at least in the minds of rebels in western Sudan, the agreement marginalized security concerns in Sudan's Darfur region, and specifically failed to address security issues of Darfur's black African farmers. Rebels from Darfur, claiming membership in the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM), organizations not represented in the larger peace process, began engaging in skirmishes with Arab nomads of the region. In an effort to stifle opposition, the national government armed Arab nomads (Janjaweed) who started systematically attacking and destroying black African villages in Darfur, apparently with the support of the Sudanese military,. With more than 600 villages destroyed as of November 2004 (see Figure 2), this "scorched earth" policy displaced more than a million people to refugee camps and resulted in countless rapes and killings that the Sudanese Government is linked to supporting and has yet failed to stop.⁵² With estimates suggesting 70,000 dead, President Bush and former Secretary of State Colin Powell, as well as the US Congress, have called the crisis genocide.

STRATEGY ANALYSIS AND FORMULATION

GLOBAL ENVIRONMENT

Independent of the crisis in Darfur, the world at large has not failed to notice Sudan. Some interest is linked to Sudan's oil reserves, and Sudan's location at the crossroads of Africa and the Middle East is significant, too.⁵³ Decades of north-south civil war portray Sudan as an unstable nation that bears watching while expansive humanitarian assistance continues - since 1989, the US Agency for International Development (USAID) alone has poured over a billion dollars into Sudan.⁵⁴ Within this generalized framework, several specific interests merit further discussion.

Security and stability are the strongest common interests that exist with regard to Sudan. Surrounding African states have an interest in stable government that can maintain peace and stimulate economic investment. Similarly, world powers have an interest in stability that addresses humanitarian needs and deters the prospect of genocide reappearing in the region. Stability and functioning national security institutions also address concerns about influence and

sanctuary of international terrorists. In Sudan, stability that maintains the current Arab-influenced government remains attractive to Middle East nations.

Although oil reserves in Sudan are smaller than those of oil-rich Saudi Arabia, they have attracted significant foreign investment, particularly from China.⁵⁵ China has an interest in its investment, just as Sudan's Government wants to continue to control oil revenues. Disrupting this revenue would provide significant leverage to parties dissatisfied with the Sudanese Government, opposed to peace in Sudan, or dissatisfied with the terms of that peace.

Sudan's lack of development has also generated interest. Missionaries have been coming to Sudan's south in an attempt to bring a new source of faith and the means to improve life. Numerous nongovernmental organizations also seek to fight slavery and provide humanitarian assistance in the region. For both groups, past progress and current initiatives are undermined when stability and security are affected.⁵⁶

Sudan's location and natural resources aside, the country suggests few threats and justifies minimal national interest for many nations, and even proof of genocide that is of significant magnitude may not change this perspective. This lack of commitment is reflected in the UN posture regarding Darfur – member states are collectively opposed to calling the crisis "genocide," and lack the will to do more than continue humanitarian assistance while repeatedly threatening the government with sanctions. The UN has also been slow to expand AU presence, although AU deployment assistance and logistic support needs are admittedly significant.⁵⁷

To its credit, the UN has continued to document atrocities in Darfur⁵⁸ and, under pressure, did appoint a commission to investigate genocide allegations.⁵⁹ In a just released report, the commission concluded that Sudan's Government "has not pursued a policy of genocide . . . [but] the Government of Sudan and the Janjaweed are responsible for crimes under international law . . . [and] attacks on villages, killing of civilians, rape, pillaging and forced displacement have continued even while [the UN] was conducting its inquiry." The report recommends that the Security Council forward allegations against individual members of the Sudanese Government, the Janjaweed, and the rebel groups to the ICC,⁶⁰ a position the Secretary-General endorses.⁶¹

US DOMESTIC ENVIRONMENT

National media has focused on Sudan for almost a year, and press editorials reflect heightened sensitivity associated with use of the term genocide. Likely haunted by memories of inaction in Rwanda and claims that the West cares only about genocide of whites, the US Congress



FIGURE 1. OIL AND GAS CONCESSION HOLDERS IN SUDAN ⁶²

Date: November 15, 2004

Sudan (Darfur) - Chad Border Region Confirmed Damaged and Destroyed Villages

UNCLASSIFIED

Villages in Darfur confirmed as destroyed or ruined: 629
Villages in Darfur confirmed as damaged: 188

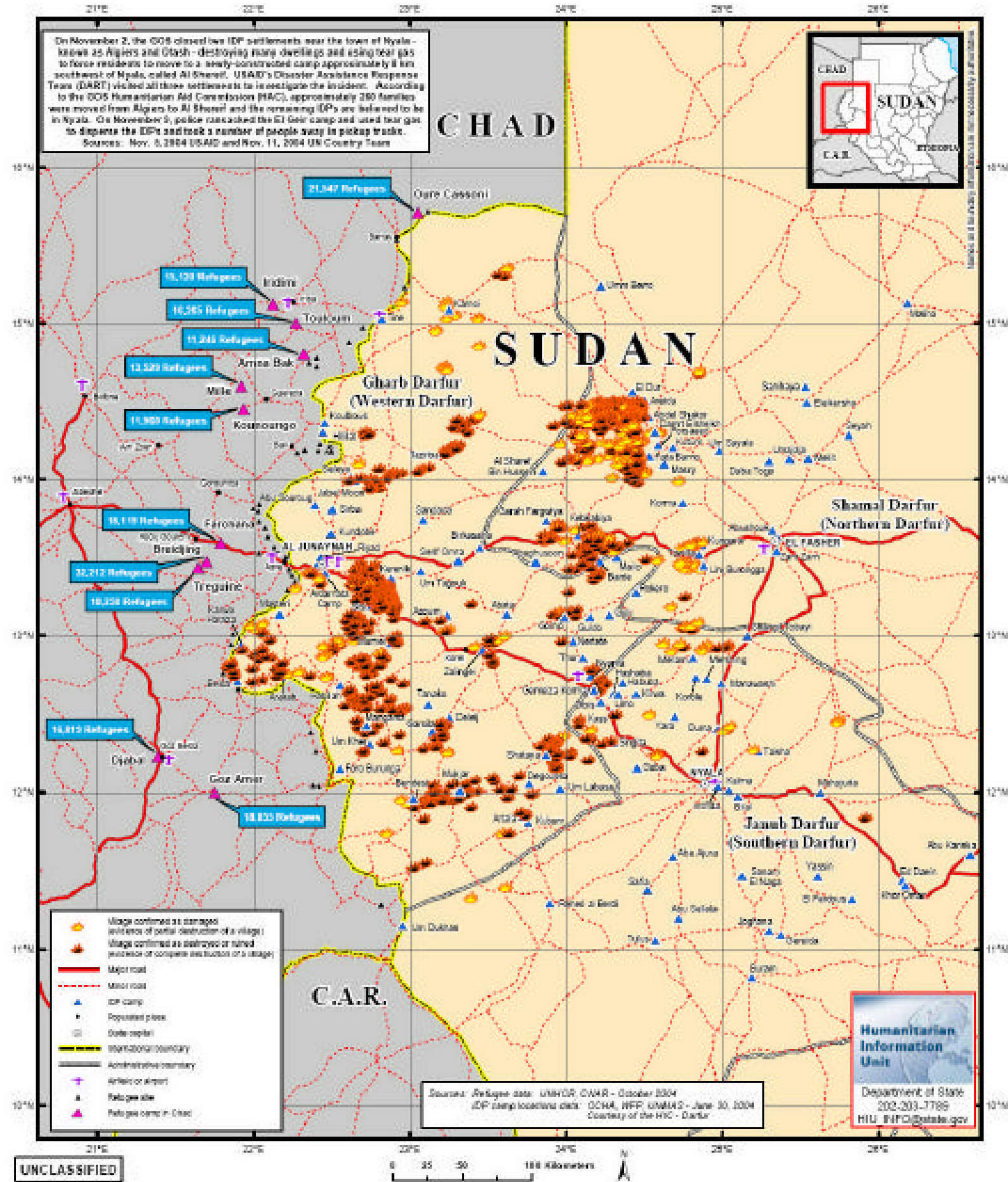


FIGURE 2. CONFIRMED DAMAGED AND DESTROYED VILLAGES IN DARFUR ⁶³

formally resolved to call the crisis “genocide.”⁶⁴ A similar declaration from then-Secretary Powell did the same, although neither Congress nor the Secretary proposed US military action.⁶⁵ With current deployments severely stretching US fiscal and military resources, both instead focused on influencing a more proactive UN response.

Domestic public opinion on Sudan is hard to gauge; no surprise given that tsunami relief and post-election violence in Iraq dominate the news. One study suggests the US public would support intervention, although an understanding of what is going on in Sudan seems lacking.⁶⁶ The extraordinary willingness of Congress and the President to use the word “genocide” in referring to Sudan reflects the US does care. Given the intensity of present international commitments, generating public support for more than the current deployment of AU forces or possibly a more expansive UN-led response in Sudan may be difficult. Also, with referral of crimes against humanity to the ICC now a formal recommendation before the Security Council, domestic interest in the Rome Treaty and the current lack of US support for the ICC may resurface, particularly if US efforts impact the ability to prosecute charges.⁶⁷

CURRENT NATIONAL SECURITY POLICY

According to the President’s National Security Strategy (NSS), in addition to winning the Global War on Terrorism (GWOT), we want to make the world not just safer, but better. To that end, we must be prepared to support political and economic freedom and promote respect for human dignity.⁶⁸ President Bush further emphasized in his latest inaugural address that “[t]he survival of liberty in our land increasingly depends on the success of liberty in other lands . . . [a]ll who live in tyranny and hopelessness can know: the United States will not ignore your oppression, or excuse your oppressors.”⁶⁹ The current situation in Sudan is inconsistent with US NSS, and references to genocide in Darfur by Congress and the President reflect consensus that more needs to be done. Conclusion of a comprehensive north-south peace agreement is a sign of optimism, but the failure to extend peace to Darfur continues to be well documented.⁷⁰

The significance of President Bush and Congress formally raising allegations of genocide before the world should not be underestimated. Contrary to what might have been anticipated after Rwanda, formally alleging the existence of genocide in Darfur has not generated overwhelming pressure to intervene. Instead, there has been open disagreement over the question of genocide, and a sluggish UN effort to formally conclude whether or not there has been genocide. The slow UN response may reflect an uneasy appreciation for the impact of its determination – in failing to find genocide in Sudan, the UN has refuted US allegations and

reduced incentives (and arguably legal justification) for more aggressive member interest and support. At the same time, the UN has alleged crimes against humanity including rape and mass killing and proposes referring the allegations to the ICC, a forum Congress has made it clear the US will not support.⁷¹ The result is a potential stalemate that keeps the pressure off the Sudanese Government – China does not support economic sanctions that might affect its energy supplies, the US does not support ICC referral, and the UN membership at large does not support an alternative to the ICC while limiting support to an expanded AU force presence.

Reflecting again on US policy as articulated by President Bush, it is in our vital interest to bring freedom and liberty to the oppressed people of Sudan, something that will not occur until the violence in Darfur is contained. The US raised the allegation of genocide and referred the issue to the UN in accordance with the Genocide Convention, and it is important for the US to follow through on the allegation without making genocide the threshold determination for action. Specifically, long term progress on the question of genocide response and ICC jurisdiction do raise significant US interests, but it is not in US interests for progress in Darfur to be further delayed.

ANALYSIS – ENDS, WAYS, MEANS AND FEASIBILITY, ACCEPTABILITY AND SUITABILITY (FAS) ANALYSIS OF CURRENT STRATEGY

Ends clearly must equate to stopping or slowing the killing in Darfur. The US ability to achieve this end may be influenced by the UN determination on the existence of genocide but, as discussed previously, the US should not condition its interest in resolving this crisis on the existence or non-existence of genocide. To date, the US response to the Darfur crisis has largely employed diplomatic means in an effort to create UN pressure on the Sudanese Government. Specific measures include:

- On 22 July 2004, the US House of Representatives passed a resolution declaring genocide in Sudan.⁷²
- On 30 July 2004, the UN Security Council adopted US sponsored Resolution 1556 demanding action by the Sudanese Government to disarm the Janjaweed and stop the violence.⁷³
- On 9 September 2004, the Secretary of State called the treatment of Sudan's citizens in Darfur genocide in a presentation to the Senate Foreign Relations Council.⁷⁴
- On 18 September 2004, the Security Council adopted US sponsored Resolution 1564 again demanding that the Sudanese Government and rebel groups stop the violence. The resolution says the council will consider additional measures, including sanctions affecting Sudan's oil industry, if Sudan fails to carry out its pledges. The resolution also

calls on nations to support an expanded AU presence and proposes action by the Secretary General to formally inquire into the existence of genocide.⁷⁵

- On 7 October 2004, the Secretary General formally established a commission of inquiry for Darfur to determine if genocide has occurred.⁷⁶
- On 24 October 2004, an AU force of about 300 started arriving in Darfur with US support. Deployments continue but lag well behind goals.⁷⁷
- On 26 October 2004, the Security Council adopted Resolution 1569 noting its decision to hold meetings in Nairobi, Kenya, with an agenda focus on Sudan.⁷⁸
- On 19 November 2004 in Nairobi, the Security Council passes US sponsored Resolution 1574 expressing support for north-south peace progress, but reminding all parties of their commitments to support efforts to end violence in Darfur and to support the Secretary General's commission of inquiry. Member nations are encouraged to support AU force expansion to 3,320.⁷⁹
- In December 2004, after a framework for north-south peace was established, Congress passed the Comprehensive Peace in Sudan Act conditionally authorizing substantial support to the peace process while emphasizing the need to stop the violence and expand the peace process to Darfur.⁸⁰

With regard to feasibility, acceptability and suitability, UN actions through November reflect that national diplomatic means are adequate to influence the UN process (feasibility) and are an acceptable way to apply pressure on Sudan (acceptability). Unfortunately, the general deterioration in Darfur since November, with incidents involving clashes between the government and rebels, attacks on relief agencies, and even attacks on AU peacekeepers, suggests that applying pressure on the Sudanese Government through the UN may not be capable of stopping the crisis.⁸¹ Three points bear emphasis:

- Despite repeated reassurances from the Sudanese Government that exceptional measures are being pursued, including dispatch of significant police forces and active prosecution of offending *Janjaweed*, reports from Darfur suggest little progress.
- In declaring that the Darfur crisis involves genocide, and by insisting this is the case despite the recent UN determination to the contrary, the US continues to implicate the Genocide Convention and open itself to criticism regarding its limited response. While no clear standard exists, House Congressional Resolution 467 was passed almost seven months ago.

- The UN is not immune from criticism for failing to act effectively even in the absence of genocide, but the UN recommendation to refer individual cases to the ICC puts a fresh opportunity to influence the Sudanese Government on the table.

Serious questions regarding the suitability of the limited ways in which the US is now reacting to the crisis in Sudan make it clear - in the context of a greater risk assessment, it is important to consider the overall impact of failing to halt the crisis in Sudan and to look more closely at alternative courses of action.

ANALYSIS OF ALTERNATIVE COURSES OF ACTION

In no particular order, the following alternatives consider elements of national power available to address the crisis in Darfur within the context of feasibility, acceptability and suitability (FAS).

Expanded Military Presence in Darfur— this course of action could take several forms; unless combined with other elements of national power, however, questions of suitability remain.

- Unilateral Deployment of US Forces – generally not supported by FAS analysis. Drawing on already stretched military resources, the US could deploy a military force to Darfur, an action not inconsistent with US allegations of genocide. Given competing demands, optimal forces might not be available (feasibility) creating questions about the impact a deployment might make on the crisis (acceptability). Also, unilateral deployment of US forces could fan the flames of US detractors who would point to regime change and oil as motivators for deployment, evidence clear lack of confidence in the AU, and demonstrate total lack of respect for the UN determination regarding genocide (suitability).
- Multinational Deployment of Military Forces including US Forces – limited support provided by FAS analysis. Depending on the nature of the US and multi-national commitment, deployment of a coalition enhances the potential that forces would be available (feasibility) in the requisite composition and number (acceptability). Deployment of US forces does reinforce the US response to what it has called genocide, but it also further stretches limited military forces and forgoes an opportunity for the UN, the AU, and other UN member states to independently assume a leadership role (suitability).
- Multinational Deployment of Military Forces Beyond Current AU Force Levels Without US Forces – conditionally supported by FAS analysis. Commitment of AU forces has

not provided an effective response to the crisis in Darfur, and it is not clear whether increased AU force levels without greater US or NATO partner nation participation can succeed (feasibility). Logistics and other forms of support (e.g., intelligence, lift) from the US or NATO can make a tremendous difference, and there is room for increased support well short of actual US/NATO troop deployments. Given that an AU response force reinforces the regional status of the Union and Africa's ability to address its own problems, increased support to enhance the mission's likelihood of success is merited (acceptability and suitability).

- Creation of a No Fly Zone in Darfur – questionable support using FAS analysis. The Sudanese Government has used aircraft to support village attacks in Darfur, and an initiative to limit government flights in the region would not be impossible to implement (feasibility). While not impossible, enforcing a No Fly Zone would require significant assets and gain an advantage that is less than clear – the effort would demonstrate international resolve, but there is no suggestion attacks would stop without air support (acceptability and suitability).

Humanitarian Assistance in Darfur – Sudan is already the focus of major humanitarian assistance initiatives. While humanitarian assistance does reduce suffering (feasibility), effective delivery of aid is undermined by an ever-present need for security (acceptability). Significantly expanding aid is generally not supported by FAS analysis until the Sudanese Government intervenes to stop the violence (suitability). This is a difficult balancing act; failure to expand aid puts displaced civilians at risk. The alternative - expanding aid unilaterally while the Sudanese Government refuses to meet its UN commitments - sends the wrong message. Expanding aid may also relieve pressure on the Sudanese Government to mitigate the present violence directed at Darfur's civilians, aid workers, and peacekeepers.

Congress has wrestled with a similar dilemma in the wake of Sudan's North-South Peace Agreement, an agreement the US has fostered. Additional support is now needed to implement the agreement, but providing that support while violence continues in Darfur marginalizes the alleged genocide and again sends the wrong message to the Sudanese Government. In making support conditional on progress in Darfur – the position Congress has taken in its Comprehensive Peace in Sudan Act⁸² – the overarching interest in stopping the killing is emphasized, but not without cost. Specifically, effectively holding the country at large hostage to resolving the crisis in Darfur creates risk for the peace plan.

Diplomatic Pressure and Other Elements of Power – consistent with UN Security Council Resolution 1556 and Article 41 of the UN Charter, there are additional measures that might be

applied to the crisis (feasibility). These measures pressure Sudan's Government rather than responding directly to the crisis like military intervention or humanitarian assistance. Cited examples include economic sanctions or interruption of international communications through "... rail, sea, air, postal, telegraphic, radio . . . and the severance of diplomatic relations."⁸³ Despite arms sales and oil interests of several nations including China, existing support for increased pressure on the Sudanese Government suggests sanctions are feasible.⁸⁴ Whether pressure would cause the Sudanese Government to act (acceptability), or whether the delay engendered in building pressure is responsive to national interests (suitability) are unanswered questions. Obviously, employment of additional measures creates risk that the situation will get worse before it gets better, an outcome that may endanger the new north-south peace agreement and also at odds with a declaration that genocide is occurring, but sanctions that impact arms or oil revenue may be the only way to get the attention of the Sudanese Government.

The UN recommendation to refer allegations to the ICC may also get the attention of the Sudanese Government. This is a recommendation that could be accommodated by referring allegations to the ICTR under an expanded mandate, or to another newly designated tribunal (feasibility). US efforts to promote an alternative to the ICC at a point when allegations have already been formulated and individuals named will mean delay, and may appear obstructionist and inconsistent with the US position on the existence of genocide (suitability). Delay will also put off the root question – will the existence of formal allegations influence the Sudanese Government to stop the violence in Darfur (acceptability)? If the Security Council supports an ICC referral and can not be persuaded to empower an alternative tribunal or employ alternative means (e.g., oil embargo), the US will have to balance its opposition to the ICC with its interest in saving lives in Darfur and promoting north-south peace. This balancing may not be as consequential as it appears – ICC action based on allegations referred to it by the Security Council (where the US has a veto) is not the unfettered exercise of jurisdiction driving US opposition to the court.

At a time when the world has been fixated on tsunami relief, largely unmentioned but potentially powerful information operations also merit attention. The contrast is almost painful – the world is competing to provide assistance in one crisis while another goes comparatively unnoticed. The pain and tragedy of Darfur victims is documented, but in UN reports and NGO websites instead of endless video on prime time television. The Darfur story the public must see on a repetitive basis is more than suffering and hopelessness caused by an act of God; it is the nightmare of a nation killing citizens it is charged with protecting while collecting oil revenues

and buying arms. Diplomatic efforts to encourage embargos and deployments need the energy of a supporting world public that knows where Sudan is on a map, knows the government leaders who are behind this crisis by name, and is ready to express collective outrage over inaction. The media spent days preoccupied with accusations that US tsunami relief was not generous enough. At almost the same time, the Sudanese Government was killing civilians in air attacks in violation of commitments made to the UN, while UN representatives were still in Sudan investigating genocide allegations⁸⁵. The material for media headlines and stories and public speeches and censures is available (feasible) and effective strategies to overcome political sensitivities to use it need to be developed (acceptability/suitability).

Overall, if we believe what we are saying – that genocide is now occurring in Darfur – the failure to act leaves helpless people to die while creating disturbing and fresh precedents relevant to the viability of the UN, the sanctity and respect for the Genocide Convention, and the optimistic outlook for globalization. The dilemma also reinforces the inability of African States to resolve regional issues without support. Given current US international commitments, we should not fail to appreciate that the crisis puts greatest pressure on the UN and EU member states that have significant capability and yet remain largely disengaged. Great Britain, France, and Germany, in particular, fit this description and have colonial links to Africa that suggest support to this crisis is both timely and appropriate.⁸⁶ Whether Russia and China can ever be expected to support an aggressive response to internal crisis is a question not yet addressed. The US may risk their veto without a clear determination regarding genocide, but they are part of a Security Council that needs to confront the failure of the Sudanese Government to respond to calls from the UN to stop the violence. Calling for a meeting of the Security Council open to the media to focus these issues is another diplomatic measure that bears consideration.⁸⁷

RECOMMENDATION AND RISK ASSESSMENT

Consistent with its allegations of genocide, the US must continue to expand its present diplomatic response. At the same time, given US military and financial commitments to Iraq and Afghanistan, and an expansive economic relief program in Sudan, a UN supported response drawing on the resources of key member states and regional organizations is desirable and reasonable. Specific recommendations include:

1. Prosecution of Crimes Against Humanity - Without formally conceding that genocide is not occurring, the US must resolve to support prosecution of the serious crimes against humanity documented by the UN. The US will be expected to propose trial in a non-ICC forum, but should avoid blocking referral of charges for crimes against

- humanity to the ICC if support for a non-ICC forum is not developed. Most important, the US must ensure that fighting over jurisdiction does not relieve pressure on the Sudanese Government.
2. Expanded AU Support. Continue pressure in the UN and with regional organizations (e.g., NATO/EU) that supports a global call to action in response to atrocities in Darfur, whether or not they are called genocide. Secure expanded contributions of logistics and other forms of support from non-US member nations necessary to establish conditions for success of already offered AU forces.
 3. Sudanese Government Response. Focus media, political leaders, and the public on the actions of Sudanese Governmental leaders by name. Continue pressure on the UN Security Council to make demands for an immediate and verifiable response to the violence from the Sudanese Government. Acknowledging potential limits to the ability of the Sudanese Government to stop all fighting, this response must include an end to government supported operations that endanger civilians and villages, particularly from the air, full support for expanded AU deployments, and commitment to a disarmament program that creates obligations for all militia forces.
 4. Oil and Arms Embargos. Secure UN resolve to stop the receipt of oil revenues and imposition of an arms embargo if cooperation and expanded efforts to resolve this crisis are not undertaken by the Sudanese Government within 30 days. With violence escalating in Darfur and the north-south peace process waiting, this issue is now extremely time sensitive – this creates leverage to increase pressure on China to join the Security Council in both acknowledging the crisis and directing a response from the Sudanese Government. Given that a lack of Chinese support at this juncture would signal a potential veto of oil sanctions, this initiative must not go unnoticed on the world stage and China's role in undermining effective UN action must be emphasized.
 5. Multinational Force Deployment. If expansive violence continues and all else fails, secure support from Chad to put a military presence, potentially a precision strike capable UN force led by British or French forces, on its borders. Short term focus would be protection of refugees, support for already deployed AU forces, and increasing pressure yet further on the Sudanese Government. Longer term focus would involve expanding the UN mandate for Chapter VII operations and potential strikes against government forces, a measure that should be capable of generating full

UN authorization if properly developed. For reasons previously discussed, the US should avoid direct employment of US combat forces.

The course of action proposed is not without risk. The Sudanese Government may balk at increased demands, and economic sanctions and/or military forces on Sudan's borders could destabilize the Sudanese Government, threaten the north-south peace process, and lead rebels to again escalate the conflict to full scale civil war. AU troops might be unable to ensure stability, get drawn into the conflict, and suffer significant casualties that reinforce the ineffectual nature of the regional organization and reduce the potential for stability in the region overall. And, even if deployed, non-African UN member states may balk if heightened threat of casualties or protracted presence is anticipated. For the US, this recommendation poses significant additional risk. If it fails, future interventions may not garner support without the direct involvement of the United States. Particularly where the "enemy" is a failing state, a scenario we can expect to see again, this is a scary proposition. Despite many risks, it is very likely that Sudan will respond to pressure, the AU force presence will provide stability that facilitates humanitarian relief and encourages further deployments, and the factions will be given an opportunity to test the agreement for peace. Even more encouraging is the possibility that peace will spread beyond north-south to encompass all of Sudan and even neighboring African states.

However the crisis in Darfur is resolved, world attention and the UN's role in forging a response has been highlighted by US willingness to formally raise genocide allegations and refer them to the UN, a precedent wholly consistent with the UN Genocide Convention. This brave precedent signals US willingness to challenge the world to prevent genocide and not just punish genocidal acts after the fact. The US might be wrong – the mass killing, rape, and human suffering in Darfur may not be genocide – and efforts to put pressure on the Sudanese Government may cause awkward confrontations with China, Russia, and maybe European partners, but there is a growing appreciation that genocide must be deterred. The fact that allegations alone failed to stimulate an effective world response, something many assumed would have happened in Rwanda had the US early acknowledged the crisis as genocide, only confirms what history has told us. It is not the lack of a 5,000 man intervention force, or distance, or even cost that stands in the way of an effective response to the world's greatest crime against humanity. The real impediment to stopping genocide remains a lack of international will to forcefully intervene in another nation for purely humanitarian reasons. Limited US national will and military resources may make direct US military intervention in this crisis a bridge too far. A US failure to support a genocide quick reaction force today, however,

does not condemn the nation to an endless celebration of Holocaust anniversaries, hollow chants of “never again,” and watching films like “Hotel Rwanda” without signs of progress. Instead, the US must continue efforts to stop the violence while preserving the precedent associated with having openly alleged the existence of genocide – the helpless victims of Darfur and the potential to put genocide prevention into the realm of the possible hang in the balance.

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⁵ Although not without reservations - US ratification was subject to two reservations and five understandings. Most significantly, the US clarified its intent not to participate in or be bound by international tribunals without its consent, a position the US has reemphasized through its opposition to the International Criminal Court. Ibid.

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GLOSSARY

African Union (AU)

European Union (EU)

Feasibility, Acceptability and Suitability (FAS)

Global War on Terrorism (GWOT),

International Criminal Court (ICC)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

International Criminal Tribunal for Rwanda (ICTR)

International Organization (IO)

Justice and Equality Movement (JEM)

National Security Strategy (NSS)

Nongovernmental Organization (NGO)

North Atlantic Treaty Organization (NATO)

Presidential Decision Directive (PDD)

Rwandan Patriotic Front (RPF)

Rwandan Armed Forces (RGF)

Sudanese People's Liberation Movement/Army (SPLM/A)

Sudanese Liberation Army (SLA)

UN Assistance Mission for Rwanda (UNAMIR)

United Nations (UN)

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